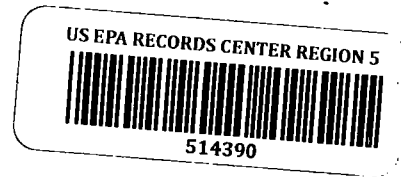




U.S. Department of Justice



DB:DH:bt  
90-7-1-21

Washington, D.C. 20530

January 25, 1985

Edward J. Schwartzbauer, Esq.  
Dorsey & Whitney  
2200 First Bank Place East  
Minneapolis, Minnesota 55402

Re: United States v. Reilly Tar & Chemical  
Corporation, no. 4-80-469 (D. Minn.)

Dear Ed:

We are writing you to confirm the conversations we had with Rob Polack and yourself on January 24, 1985. We will meet with representatives of Reilly in Washington on Monday, January 28, to discuss the issue of the United States' past costs as part of a settlement. You will work with us next week to resolve any problems concerning the stipulation regarding the admissibility of analytical data and the missing documentation explaining the Monsanto data. In your conversation with Bill Sierks on January 24, Mr. Sierks asked you to contact him if there was any additional information you require in order to resolve any problems concerning the stipulation. We believe that you have all documentation which has been made available to us concerning the analytical data. You indicated that you would contact us if you needed such additional information. Mr. Hird advised Mr. Polack that if the parties do not enter into a stipulation concerning the admissibility of the analytical data by the end of next week, the United States may be unable to continue to participate in settlement talks because of the additional time which will be devoted to preparing to prove the data at trial.

Our position concerning the data stipulation is as follows:

In our January 9, 1985 meeting at the MPCA offices, you stated that Reilly was willing to stipulate to the admissibility of all analytical data, except for certain pre-1980 HPLC data analyzed by the Minnesota Department of Health. We agreed to draft a stipulation, which was sent out to all parties for review by express mail on January 16, 1985.

Your letter of January 15, 1985 to Messrs. Shakman and Hird confirms that scope of stipulation:

" . . . I suggested that we enter into a stipulation that all analytical data subsequent to January 1, 1980 would be admissible in evidence without further foundation."

The stipulation we drafted is consistent with your comments as stated in the January 9, 1985 meeting and January 15, 1985 letter. You also stated on Monday, January 21, 1985, that you had reviewed the draft stipulation and had no problem with it. On January 23, 1985, you indicated that Reilly could not sign the stipulation for several weeks, because Mr. Craun had not had the opportunity to review quality assurance-quality control procedures and analytical protocol for many of the laboratories which has performed analyses in this case although John Craun had not reviewed it.

You also advised us on January 23, 1985, that if ERT, Soils Exploration Co./Twin Cities Testing, and Mark Hurd Aerial Photos, Inc., are added to Appendix B of the draft stipulation, Appendix B was acceptable to Reilly.

We then requested that you stipulate to the admissibility of Appendix B and the data analyzed by those laboratories in Appendix A for which QA/QC and analytical protocol had been furnished to Reilly. You refused to enter such a stipulation at this time.

The United States had eased its efforts in the analytical area during the past two weeks in reliance upon the anticipated stipulation. Your refusal to stipulate to any data now forces us to turn our efforts back to this area, in light of the impending February 1, 1985 deadline on requests for admissions.

Since we cannot be certain that the data stipulation will be signed soon, we must proceed under the assumption that no stipulation will be entered. The United States has begun to assemble the necessary documentation to establish chain of custody and other elements necessary for admission of analytical data. This process is extremely time consuming and expensive, particularly because there are several hundred analyses which will be introduced at trial in this case. The United States will seek the recovery of these costs from Reilly. We believe that it is in the interests of both parties to avoid this extremely burdensome and expensive task. We sincerely hope that the stipulation can be executed by the end of next week. Otherwise, the time consuming nature of preparing to introduce the data at trial

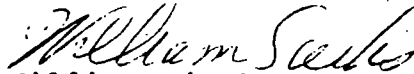
will interfere with our ability to participate in future settlement talks.

Sincerely yours,

Assistant Attorney General  
Land and Natural Resources Division



By: David Hird, Attorney  
Environmental Enforcement Section



William Sierks, Attorney  
Environmental Enforcement Section

cc: The Honorable Crane Winton  
All Counsel of Record  
Robert Polack, Esq.